

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ARTHUR R. NETHERLY, et al.,

Plaintiffs,

v.

**THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,**

Defendant.

Case No.: 2:10-cv-244

JUDGE GREGORY L. FROST

Magistrate Judge Terence P. Kemp

OPINION AND ORDER

This matter is before the Court on Defendant's motion to dismiss (Doc. # 5), Plaintiff's memorandum in opposition to Defendant's motion (Doc. # 11), and Defendant's reply memorandum (Doc. # 13). For the reasons that follow, the Court **GRANTS** Defendant's motion to dismiss.

This action was filed with a companion case that its identical to this one in every way except that it excludes the two plaintiffs who are joint beneficiaries with Plaintiff Arthur R. Netherly. *See Netherly v. The Prudential Ins. Co. of Am., et al.*, No. 2:10-cv-244. That case was filed four days before the instant action, which was originally assigned to the Honorable John D. Holschuh. Judge Holschuh and the undersigned agreed that the two cases were related and this case was transferred to the docket of the undersigned. (Doc. # 3.)

The parties have not asked for the cases to be consolidated. Defendant, however, filed a motion to dismiss in this action that is identical to the motion to dismiss filed in the first Netherly case. The Court today issued a decision in the first Netherly case that grants Defendant's request for dismissal. The Court hereby adopts that Opinion and Order in its entirety and for the reasons

stated therein **GRANTS** Defendant's motion to dismiss. (Doc. # 5.) The Clerk is **DIRECTED** to **ENTER JUDGMENT** accordingly.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge